

Docket No. F-6931

Ser. No. 09/829,296

REMARKS

Claims 1-7 remain in this application. Claims 4-7 are allowed. Claims 1-3 are rejected.

Claims 1-4 are rejected under 35 U.S.C. § 102(b) as being anticipated by the Quinn reference. Applicant herein respectfully traverses these rejections. "Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*" *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984) (emphasis added). It is respectfully submitted that the cited reference is deficient with regard to teaching the claimed shorting of the positive and negative battery electrodes by the operation of the switch element.

It is respectfully submitted that the rejection is improper because the Examiner is combining two different embodiments of the reference. As specifically noted above, anticipation requires each element to be arranged as in the claim. It is readily clear that if two different embodiments in a reference are referred to in combination to make one anticipation rejection, all the elements cannot be arranged as in the claims since the Examiner is combining two embodiments to arrive at the claimed arrangement.

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Fig 28 shows an embodiment of the switch assembly of Fig. 1 which is normally closed and is incorporated in into a standard battery having a negative electrode case 200 and contact 210 providing positive electrode contact to the fixed contact 10.

Fig. 29 shows a different embodiment having a normally open switch assembly of Figs. 22-24 which is incorporated into a battery as *a sensor*. The battery is charged or discharged through terminals 262 and 264 which provide positive and negative electrodes. Charging and discharging is not effected through the switch assembly. Since anticipation requires that all the elements be shown arranged as claimed, anticipation cannot be established by the Examiner combining two different embodiments because the proposed combination is not shown in the reference.

It is further submitted that the Examiner is incorrectly interpreting both embodiments of the reference as teaching that the closure of contacts effects a shorting of the battery. With regard to the switch of Figs. 22-24, terminal plate 96 is not a negative electrode plate because it is electrically isolated from the case which is the negative terminal of the battery. The case attaches to the housing cap A2 which has an *insulator* support ring B1 which supports the insulating support ring (C Fig. 1) and the insulator ring 32a (32 Fig. 1) which isolates the terminal plate 96. Hence, the terminal plate 96 is not the negative electrode of the battery

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and shorting of switch blade 40a across fixed contact 10a and terminal plate 96 cannot effect shorting of the battery.

With regard to the embodiment of Fig. 29, there is no connection shown between the terminal support plate 96 and a negative terminal of the battery. The normally open switch assembly is merely used as a sensor to control the charging circuit M hence it is called a "signal circuit." When the switch closes charging is stopped. Col. 10, line 2-5. Discharging is not effected since the switch assembly does not relate to the charging contacts 264 and does not effect shorting of the battery.

In view of the above, it is respectfully submitted that claims 1-3 particularly describe and distinctly claim elements not disclosed in the cited reference. Therefore, reconsideration of the rejections of claims 1-3 and their allowance are respectfully requested.

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In light of the foregoing, the application is now believed to be in proper form for allowance of all claims and notice to that effect is earnestly solicited. Please charge any deficiency or credit any overpayment to Deposit Account No. 10-1250.

Respectfully submitted,
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